

Message Text

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ACTION EUR-12

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FM USMISSION USBERLIN

TO AMEMBASSY BONN

INFO SECSTATE WASHDC 1883

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AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

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C O N F I D E N T I A L USBERLIN 0101

E.O.11652: GDS

TAGS: PGOV, PFOR, PINS, WB, GW, YS

SUBJECT: LORENZ KIDNAPPING AFTERMATH: POSSIBLE
RETURN OF PRISONERS TO BERLIN

REFS: A) BONN 00795, B)USBERLIN 76, C) USBERLIN

A-165(1975)

1. SUMMARY: AT FRENCH REQUEST ALLIED MISSION LEGAL ADVISERS MET JANUARY 16 TO CONSIDER LEGAL REQUIREMENTS CONCERNING PRISON IN WHICH TERRORISTS SHOULD BE INCARCERATED IN EVEN FRG OBTAINED THEIR RETURN FROM SOUTH YEMEN. LEGAL ADVISORS AGREED UNDER NORMAL PROCEDURE TWO WHO HAD BEEN SERVING SENTENCES IN BERLIN WOULD BE RETURNED TO BERLIN. WHILE THERE WAS THEORETICAL POSSIBILITY OF KEEPING THEM IN FRG, EFFORT TO DO SO WOULD OPEN TO LEGAL CHALLENGE AND RESULT OF COURT REVIEW COULD NOT BE FORESEEN. WE TOOK OCCASION TO INDICATE AGAIN OUR DESIRE THAT ALLIES NOT BE SEEN AS RAISING OBJECTIONS TO RETURN OF PRISONERS
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FROM SOUTH YEMEN AND OUR BELIEF THAT QUESTION OF THEIR

RETURN TO BERLIN WAS UNLIKELY EVER TO POSE SERIOUS PRACTICAL PROBLEMS FOR ALLIES. END SUMMARY.

2. BOTH BRITISH AND FRENCH HAVE DONE CERTAIN AMOUNT OF GRUMBLING WITHIN EARSHOT OF SENAT LAST FEW DAYS IN CONNECTION WITH FRG PLANS TO REQUEST EXTRADITION OF FIVE TERRORISTS FROM SOUTH YEMEN. WE DISASSOCIATED OURSELVES FROM FORMAL APPROACH TO SENAT CHIEF OF CHANCELLORY HERZ JANUARY 15 THAT BRITISH INITIATED TO EFFECT THAT ALLIES WERE" CONCERNED" ABOUT POSSIBILITY THAT TWO BERLIN TERRORISTS, SIEPMANN AND BECKER, MIGHT BE RETURNED TO BERLIN, ALTHOUGH WE JOINED WITH ALLIES IN URGING CONSULTATIONS ON BERLIN-RELATED ASPECTS IN BONN.

3. FRENCH POLAD INDICATED HIS MISSION TAKES NEGATIVE VIEW OF ENTIRE EXERCISE ALTHOUGH FRENCH ARE APPARENTLY NOT PREPARED TO TELL GERMANS THAT THEY SHOULD LEAVE TERRORISTS IN SOUTH YEMEN. APPARENTLY IN EFFORT TO FIND AMMUNITION TO CONTEST GERMAN POSITION THAT SIEPMANN AND BECKER SHOULD RETURN TO BERLIN IF THEY ARE AGAIN TAKEN INTO CUSTODY, FRENCH ASKED MISSION LEGAL ADVISERS TO REVIEW JUDICIAL SITUATION.

4. AT MEETING JANUARY 16, LEGAL ADVISERS AGREED THAT NORMAL PROCEDURE WOULD BE FOR SIEPMANN AND BECKER TO BE BROUGHT BACK TO BERLIN TO RESUME SERVING THEIR SENTENCES. SITUATION IS GOVERNED BY ORDINANCE ON EXECUTION OF SENTENCES (STRAFVOLLSTRECKNUGSORDNUNG), IDENTICAL VERSION OF WHICH IS IN EFFECT IN BERLIN AND ALL LAENDER PURSUANT TO ITS RECOMMENDATION BY CONFERENCE OF INTERIOR LAENDER MINISTERS. PARAGRAPH 24(4) OF THAT ORDINANCE PROVIDES THAT " IF THE EXECUTION OF SENTENCE HAS BEEN INTERRUPTED, E.G., BECAUSE OF PROBATION OR BECAUSE THE PRISONER HAS ABSCONDED, I SHALL BE CONTINUED IN THE PENAL INSTITUTION WHERE THE CONVICTED PERSON WAS HELD PRIOR TO THE INTERRUPTION." PARAGRAPH 24 ALSO PROVIDES THAT PRISONER NORMALLY HAS RIGHT TO SERVE SENTENCE OF MORE THAN SIX MONTHS DURATIN IN PRISON WITHIN JURISDICTION OF HIS

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OR HER PLACE OF RESIDENCE. PARAGRAPH 26 STATES AS AN EXCEPTION THAT " DIVERGENCE...IS ONLY PERMITTED FOR IMPORTANT REASONS AND WITH THE AGREEMENT OF A HIGHER PENAL AUTHORITY...IF, DIVERGENT FROM PARAGRAPH 24, A PENAL INSTITUTION WHICH COMES UNDER THE JURISDICTION OF A HIGHER PENAL AUTHORITY IN ANOTHER LAND IS TO BE USED, AGREEMENT BETWEEN THE RESPECTIVE JUDICIAL ADMINISTRATIONS IS REQUIRED.Z

5. LEGAL ADVISERS AGREED THAT ORDINANCE INDICATED THAT BERLIN AUTHORITIES COULD MAKE ARRANGEMENTS FOR SIEPMANN AND BECKER TO BE CONFINED OUTSIDE BERLIN IF THEY CITED IMPORTANT SECURITY OR OTHER REASONS (SUCH AS AIR TRANSPORT DIFFICULTIES) AND ANOTHER LAND WAS WILLING TO TAKE THEM. SIEPMANN OR BECKER COULD, HOWEVER, RAISE A LEGAL CHALLENGE TO SUCH AN ARRANGEMENT, AND IT COULD NOT BE PREDICTED WITH ANY CERTAINTY HOW COURT WOULD WEIGHT CALCULUS BETWEEN REASONS OF STATE AND RIGHTS OF PRISONERS.

6. KAMMERGERICHT CASE REFERRED TO BY SENAT REP MEICHSNER REF A IS, INCIDENTALLY, ONE REPORTED REF B. TWO CONVICTED TERRORISTS IMPRISONED IN BERLIN, SCHUBERT AND MOHNERT, HAVE HELD UP THEIR TRANSFER TO HESSE FOR MORE THAN THREE MONTHS BY INVOKING THEIR " RIGHT" TO SERVE SENTENCES IN BERLIN. WE UNDERSTAND FROM SOURCE IN SENATOR FOR JUSTICES'S OFFICE THAT KAMMERGERICHT IS SHOWING CONSIDERABLE RELUCTANCE TO ACCEPT ARGUMENT THAT DESIRABILITY OF REDUCING CONCENTRATION OF TERRORISTS JUSTIFIES MOVING SOME OF THEM AWAY FROM THEIR NATIVE CITY AND HAS ASKED SENAT TO PROVIDE MORE DETAILED JUSTIFICATION.

7. WE TOOK ADVANTAGE OF LEGAL ADVISERS MEETING TO STRESS AGAIN TO ALLIES THAT WE DO NOT BELIEVE IT USEFUL FOR ALLIES TO PLACE THEMSELVES IN POSITION OF APPEARING TO RAISE DOUBTS ABOUT BASIC GERMAN DECISION TO SEEK TO GET TERRORISTS BACK FROM SOUTH YEMEN. IN EVENT THAT EXTRADITION REQUEST IS VIEWED FAVORABLY BY YEMENIS, THERE WOULD BE PLENTY TO TIME FOR GERMANS TO CONSIDER WHETHER THEY WISHED TO MAKE EFFORT TO KEEP CONFIDENTIAL

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SIEPMANN AND BECKER IN FRG AND FOR THEM TO EXPLORE AIR CHARTER POSSIBILITIES SHOULD THEY WISH TO RETURN THEM TO BERLIN. WE EXPRESSED DOUBT THAT ALLIES WOULD EVER WISH TO FORBID GERMANS FROM BRINGING PRISONERS BACK TO BERLIN ON GROUND THAT THEY WOULD CONSTITUTE UNACCEPTABLE SECURITY RISK HERE OR THAT WE WOULD EVER BE FACED WITH PRACTICAL PROBLEM OF WHETHER OR NOT ALLIED MILITARY AIRCRAFT COULD BE MADE AVAILABLE. SHOULD LATTER PROBLEM ULTIMATELY MATERIALIZE, WE WOULD HAVE TIME TO DECIDE IT ION BASIS OF FULL CONSULTATION AND IN LIGHT OF PRACTICAL CIRCUMSTANCES THEN EXISTING.GEORGE

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